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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/635,711

08/06/2003

Jan van Buuren

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EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

07/02/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/635,711	Applicant(s) VAN BUUREN ET AL.	
	Examiner Carolyn A. Paden	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 11 and 12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 11 and 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10-31-07</u> . | 6) <input type="checkbox"/> Other: _____ |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 31, 2007 has been entered.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Decio (0,421,504) in view of Chen (5,374,751) and further in view of Lai Ganguli (0,849,353).

Decio discloses a margarine that is made from olive oil and butter. The spread is made from unrefined olive oil and has a characteristic olive flavour. The claims appear to differ from the reference in the recitation that the oil has particular polyphenol content and that the oil has no perceivable olive oil odor. Chen teaches deodorizing edible oil. In the abstract, the

process is indicated to remove substances that impart a disagreeable odor and taste to the oil. At example 1 the preparation of olive oil is disclosed. Lai Ganguli teaches that olive oil is known to contain polyphenols (page 2, lines 16-27). In Ganguli the polyphenols do not appear to be volatile because they are prepared by extraction into water and the concentration by evaporation of the water phase (see abstract). It would be obvious to one of ordinary skill in the art to use the oil of Chen in the margarine of Decio in order to prepare a butter that does not have a typical olive oil bitter type flavor. Although the polyphenol content of the oil is not especially mentioned in the Chen and Decio reference, Lai Ganguli teaches that it is a known component of olive oil. Lai Ganguli also teaches that levels of polyphenols that are less than 240 ppm are hardly bitter (compare Table 1 with Table III of Lai Ganguli) and would not be expected to have a bitter taste.

Claims 11 and 12 have been added that recite refining temperature and pressure but the claims are directed to an olive oil spread and not to the way it was prepared. The fact that the oil may have been refined in one way or the other is not alone seen to constitute unobviousness.

Applicant argues that none of the references show an olive oil refining temperature that can be used to obtain an olive oil that contains polyphenols that does not have a perceptible odor. Applicant also argues that there is no suggestion in the references to the use of the olive oil in a spread. This has been considered but is not persuasive. To select an olive oil with less olive oil odor would have been an obvious way of preparing a spread product that tastes more like butter rather than olive oil. To select an olive oil with the level of polyphenols of Lai Ganguli would have been an obvious way to enhance the oxidative stability of the oil and to provide added health benefits (note page 2, lines 20-27).

Applicant argues a temperature range of the oil treatment but the claims are directed to a product and not to a process so no weight is attached to this feature. Applicants' arguments relating to the combination of the references have been considered but are not persuasive. Applicant appears to be optimizing the oil of Decio to suit his specific requirements. No claim is allowed.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Decio in view of Chen and further in view of Lai Ganguli as applied to claims 1-3, 11 and 12 above, and further in view of Baileys at page 67.

The claims appear to differ from Decio in view of Chen and further in view of Lai Ganguli in the recitation of the presence of squalene in the oil. Baileys teaches at page 67 that squalene is a natural constituent of olive oil and provides a range of the amount of squalene that is within the range of the claims. Thus one would expect that the spread of Decio that contains olive oil to inherently also contain squalene. Further one would not expect the squalene content of olive oil to be reduced by the treatment process of Lai Ganguli because squalene is a hydrocarbon, soluble in oil, which would not be expected to be extracted by the water of Lai Ganguli.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached by dialing 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794

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